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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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10 JOSE LUIS BUEN ROSTRO, aka JOSE
11 LUIS BUENROSTRO,

12 Petitioner,

CR. No. 2:95-504 WBS

13 v.

ORDER

14 UNITED STATES OF AMERICA,

15 Respondent.
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17 On January 14, 2013, defendant/petitioner filed a
18 "Motion for Relief from Judgment in prior 28 U.S.C. § 2255
19 Proceeding pursuant to Federal Rule of Civil Procedure 60(b)(6), due to
20 Intervening Change in the Law." Although it is couched as a Rule 60(b)
21 motion, this amounts to defendant's third successive motion under §
22 2255. See United States v. Buenrostro, 638 F.3d 720, 723 (9th Cir.
23 2011)("Because Buenrostro wants to bring a new claim for relief, wholly
24 independent of the claims adjudicated in his first § 2255 proceeding,
25 his Rule 60(b) motion must be treated as a § 2255 motion.").

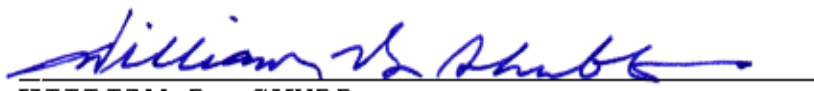
26 In a subsequent pleading filed January 28, 2013, and
27 entitled "Movant's Motion for Clarification and for the Court to take
28 Judicial Notice that Movant's 1/14/2013 Motion is a Rule 60(b)(6)

1 Motion due to Intervening Change in the Law and not a 28 U.S.C. §
2 2255," defendant argues that his motion is based on a new rule of
3 constitutional law set forth in Martinez v. Ryan, 132 S.Ct. 1309
4 (2012). However, in one of defendant's other appeals, the Ninth
5 Circuit has already held that, "... Martinez cannot form the basis for
6 an application for a second or successive motion because it did not
7 announce a new rule of constitutional law." Buenrostro v. United
8 States, 697 F.3d 1137, 1139 (9th Cir. 2012)

9 Defendant may not bring a successive § 2255 motion without
10 first obtaining leave of the Ninth Circuit. 28 U.S.C. § 2255(h). He
11 has still failed to do so. Accordingly, this most recent motion must
12 be denied.

13 IT IS THEREFORE ORDERED that defendant's Motion for Relief
14 from Judgment in prior 28 U.S.C. § 2255 Proceeding pursuant to Federal
15 Rule of Civil Procedure 60(b)(6), due to Intervening Change in the Law,
16 filed January 14, 2013 (Docket No. 359) be, and the same hereby is,
17 DENIED.

18 DATED: May 23, 2013

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21 WILLIAM B. SHUBB
22 UNITED STATES DISTRICT JUDGE
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